The Human Rights Dimension of EU Sustainability Impact Assessments
A Presentation for the Roundtable on Human Rights, Labour Rights and Sustainable Development in EU Trade Policy, Brussels, 25 May 2018

Dr. James Harrison, University of Warwick

1. Introduction

For a long time been there have been calls by various UN bodies and other organisations for governments/inter-governmental bodies to undertake human rights impact assessments of trade agreements (FTAs).[1] But most HRIAs of FTAs have been undertaken by NGOs or individuals.[2] Olivier De Schutter has created UN guidelines for governments on conducting HRIAs of trade agreements.[3] These are different from the guidance provided by the UN Guiding Principles on business and human rights in relation to human rights due diligence process for corporations.[4]

The European Commission has for many years commissioned sustainability impact assessments (SIAs), undertaken by independent researchers, when negotiating new trade agreements. Since the agreements with Moldova and Georgia, these SIAs have included a human rights dimension (Previously they included consideration of social impacts and, to a limited degree, labour rights).

2. Academic Studies on the Human Rights Dimension of HRIAs

Several academic studies have found the human rights analysis contained within EU SIAs to be seriously flawed.[5] One study of the human rights dimensions of the SIA for the EU-Tunisia Deep and Comprehensive Free Trade Agreement found that, while it 'complied with many of the formal aspects of an HRIA methodology', the human rights analysis was superficial and lacked detail.[6] Among the problems identified with the human rights dimensions of the SIAs were:

- No attempt was made to undertake detailed analysis of potentially problematic obligations (e.g. intellectual property or agricultural trade).
- There was inadequate consultation.
- Overall findings that there would be a small positive impact of the agreement were potentially misleading and based on assumptions about 'trickle down effects' of increased government revenue.
- Recommendations and the Commission's response suggest 'a great reluctance to … receive or act upon genuine recommendations that could change the shape of the negotiations."

Many of the failings of the EU-Tunisia SIA are commonplace in other assessments. Another study which examined a broader range of human rights analysis in SIAs concluded that "SIA findings have never seriously challenged the usual course of action of the Commission"[7] It is common for human rights findings in SIAs to identify positive 'trickle-down' effects as a result of increased employment and government revenue. It is sometimes recognised that there will be some pressure on low-skilled workers in less competitive industries, but this is seen as something that the trade partner government can tackle through actions such as re-training workers.[8] In its responses to these studies, the Commission generally focuses on positive impacts and often identifies that its key responsibility is to negotiate 'a comprehensive Trade and Sustainable Development chapter'.[9]

3. Towards Effective Implementation of the Human Rights Dimension of SIAs

Human rights analysis within SIAs could be improved by:

- Detailed analysis of specific sectors/regulations/issues where an initial screening/scoping process has identified that the trade agreement might have serious negative impacts.
- The inclusion of human rights experts on SIA teams with the authority and capacity to conduct in-country fieldwork in relation to priority human rights issues.
- Improved processes of consultation and participation.
- Conclusions and recommendations which address the specific findings of the studies.

For this human rights analysis to have an impact on trade negotiations, consideration should also be given to (1) the timing of the SIA process (2) the Commission's responses to studies conducted and (3) also conducting serious *ex post* impact assessments of the sustainability of trade agreements.

For further information, please contact Dr. James Harrison, University of Warwick at J.Harrison.3@warwick.ac.uk

---

[1] See Harrison and Goller, 'Trade and Human Rights: What Does 'Impact Assessment' Have to Offer?' (2008) *Human Rights Law Review* 8 (4), 587- 615

[2] The Canada-Columbia FTA reporting process is the one example other than the EU, of state/inter-governmental human rights reporting on a trade agreement. See *Agreement concerning Annual Reports on Human Rights and Free Trade between Canada and the Republic of Colombia* available at http://www.canadainternational.gc.ca/colombia-colombie/bilateral_relations_bilaterales/hrft-co_2012-dple.aspx?lang=eng For a review of early efforts, see Harrison, Human Rights Impact Assessments of Trade Agreements: Reflections on Practice and Principles for Future Assessments A Background Paper for the Expert Seminar on Human Rights Impact Assessments of Trade and Investment Agreements, June 23-24, 2010 Geneva at https://warwick.ac.uk/fac/soc/law/research/centres/chrp-old/projects/humanrightsimpactassessments/trade/hr_impact_background_paper.pdf.

[3] *Report of the Special Rapporteur on the right to food, Olivier De Schutter, Addendum Guiding principles on human rights impact assessments of trade and investment agreements* (A/HRC/19/59/Add.5) 19 December 2011 http://www.srfood.org/images/stories/pdf/officialreports/20120306_hria_en.pdf

[4] See UN guiding Principles on Business and Human Rights available at http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf For a more general overview of the fields where human rights impact assessment have taken place see 'Human Rights Measurement: Reflections on the Practice of Human Rights Impact Assessment and the Potential for Future Enhancement', *Journal for Human Rights Practice* (2011) 3 (2), 162- 187

[5] Simon Walker; Human Rights in the Trade and Sustainability Impact Assessment of the EU–Tunisia Free Trade Agreement, *Journal of Human Rights Practice*, Volume 10, Issue 1, 1 February 2018, Pages 103–124; Nicolás Brando Nicolas Hachez Brecht Lein Axel Marx 'The impact of EU trade and development policies on human rights' Work Package No. 9 – Deliverable No. 2 https://globalcampus.eiuc.org/bitstream/handle/20.500.11825/95/Deliverable-9.2.pdf?sequence=1&isAllowed=y p.125; Harrison, *Human Rights and Economic Globalisation*, Ch.4, Forthcoming.

[6] Simon Walker, Above, n.5; Harrison, Above, n.5.

[7] Brando et al, Above n.5 p.125

[8] Harrison, Above n.5. See for instance the Commission's Position Papers on Jordan and Egypt. http://trade.ec.europa.eu/doclib/docs/2016/december/tradoc_155189.pdf and http://trade.ec.europa.eu/doclib/docs/2016/december/tradoc_155190.pdf

[9] Harrison, Above n.5, Brando et al, Above n.5, p.96